

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

RAYMOND M. CLARK
Respondent

Case No.: I-00-20248

FINAL ORDER

I. Introduction

On February 27, 2002, the Government served a Notice of Infraction upon Respondent Raymond M. Clark, alleging that he violated 22 DCMR 107.1 by failing to comply with an order to correct conditions that might lead to rat harborage, and 21 DCMR 708.10 by storing waste solely in plastic bags intended for use as container liners. The Notice of Infraction alleged that the violations occurred on February 20, 2002 at 1614 Montello Avenue, N.E. It sought a fine of \$1,000 for the alleged violation of § 107.1 and a fine of \$50 for the alleged violation of § 708.10.

Respondent filed a timely answer with a plea of Deny, and I held a hearing on May 21, 2002. Keith Dixon, the inspector who issued the Notice of Infraction, appeared on behalf of the Government and Respondent appeared on his own behalf. At the hearing, Respondent changed his plea to Admit with Explanation, and requested suspension or reduction of the fines.

Based upon the testimony of the witnesses, my evaluation of their credibility and the items admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Mr. Clark owns a single-family residential building located at 1614 Montello Avenue, N.E., which he operates as a rental property. During December 2001, the tenant at the property moved out, leaving behind a number of large furniture items and bedding. Those materials were placed in an alley behind the property, outside the back fence. The tenant had contacted the Salvation Army to pick them up, but the Salvation Army had not done so by mid-January 2002.

On or about January 15, 2002, an inspector from the Department of Public Works (“DPW”) cited Mr. Clark for a regulatory violation due to the accumulation of furniture and other solid waste at the property.¹ On that same day, Mr. Dixon issued a “Notice to Abate Rodent Harborage” to Mr. Clark. Petitioner’s Exhibit (“PX”) 102. That notice is a preprinted form. Under the heading “Harborage Condition”, the following item is checked: “D.C. Code sec. 6-1052(a) – accumulation of debris.” *Id.* The notice contains no further description of the nature and location of the accumulated debris. Mr. Dixon mailed the notice to Mr. Clark on January 15, 2002.²

Upon receipt of the citation from DPW, Mr. Clark promptly made arrangements to remove the accumulation of furniture and other materials that the tenant had placed in the alley, and all such materials were removed during January. On February 20, 2002, Mr. Dixon visited the property to determine compliance with the notice of abatement he issued in January. All of the furniture and other waste he had observed outside the fence was gone. Inside the fence,

¹ There is no evidence showing the specific regulatory violation that DPW alleged against Mr. Clark.

² Although he pleaded Admit with Explanation to the charge of violating an order issued pursuant to § 107.1, Mr. Clark denied receiving the notice to abate. In light of the disposition of this matter, it is not necessary for me to decide whether Mr. Clark actually received the notice. *See* note 5 *infra*.

however, he observed five or six paint cans and one plastic bag, described by Mr. Clark as a “kitchen bag,” that had been torn open. I understand the term “kitchen bag” to refer to a bag normally used in a kitchen trash receptacle. Based upon Mr. Clark’s uncontradicted testimony, I find that the plastic bag contained old clothing or rags, and that it did not contain any food items.³

Mr. Clark has accepted responsibility for his violations.

III. Conclusions of Law

A. The § 708.10 Violation

Section 708.10 provides:

Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.

21 DCMR 708.10.

Mr. Clark’s plea of Admit with Explanation establishes that he violated § 708.10. Using plastic bags intended for use as liners in waste containers to store any solid waste refuse (other than yard waste under the conditions specified in the regulation) violates § 708.10, without regard to the nature of the trash. Thus, Mr. Clark’s storage of wastes in the “kitchen bag” violated this section. Violation of § 708.10 is a Class 4 Civil infraction, punishable by a fine of

³ There is no evidence explaining how the bag was torn open. Mr. Clark speculated that a neighborhood dog may have gotten into the yard and ripped the bag open, but there is no evidentiary support for that speculation.

\$50 for a first offense. 16 DCMR 3216.4(e); 16 DCMR 3201.1(d). In light of Mr. Clark's acceptance of responsibility for the violation, I will reduce the fine to \$40.

B. The § 107.1 Violation

The Department of Health is authorized by 22 DCMR 107.1 to issue orders requiring property owners to take certain steps to prevent rat infestation, including "[t]he removal from the premises of trash or refuse which may provide rat harborages." 22 DCMR 107.1(b). Failure to comply with any such order is a Class 1 infraction, punishable by a fine of \$1,000 for a first offense. 16 DCMR 3216.1(j); 16 DCMR 3201.1(a).

Mr. Clark's plea of Admit with Explanation establishes that he violated § 107.1. Mr. Clark, however, undertook prompt and substantial good faith abatement efforts in January. He had eliminated the conditions that gave rise to the notice to abate, *i.e.*, the large accumulation of furniture and other materials outside the fence. The Government's theory of the case, however, is that he also should have removed the paint cans and the plastic bag, located inside the fence.

A person may not be penalized for violating an order unless "a person of ordinary intelligence" can understand what the order prohibits. *E.g.*, *NOW v. Operation Rescue*, 37 F.3d 646, 657-58 (D.C. Cir. 1994) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)); *Brown v. District of Columbia*, 727 A.2d 865, 867-68 (D.C. 1999); *Smith v. United States*, 677 A.2d 1022, 1031-32 (D.C. 1996). As applied to the paint cans and the plastic bag, the notice to abate is too vague to meet that standard. The notice does not expressly require Mr. Clark to do anything about the cans or the plastic bag. It simply tells him that an unspecified "accumulation of debris" must be abated, with no further guidance. That language is too indefinite to refer necessarily to the paint cans and the bag, especially because their likely contribution to rodent

food or harborage is not readily apparent, and the Government offered no evidence of any such contribution.

The notice's citation of "D.C. Code sec. 6-1052.5(a)" does not clarify the matter. Neither the present nor the former edition of the D.C. Code contains any such section. Based upon the language of the notice to abate, it appears that the citation in the order may be a reference to § 908(a) of the Rodent Control Act of 2000, which is codified as D.C. Official Code § 8-2103.05(a). That section provides, in relevant part: "It shall be unlawful for any person to cause or permit the accumulation of debris on public or private property" "Debris," however, is defined narrowly in that statute, and the term does not include the paint cans and plastic bag.⁴ Thus, the neither the plain language of the notice to abate nor the statutory provision apparently referenced in that notice informs Mr. Clark that the paint cans and plastic bag were part of the "accumulation of debris" that he was supposed to abate; to the contrary, "a person of ordinary intelligence reasonably could conclude that he or she would comply with the notice to abate by removing the materials outside the fence."⁵

⁴ "Debris" means any of the following:

- (A) Construction or demolition waste that is not stored in a rodent-proof building and not removed after 14 days or longer;
- (B) Yard waste and branches that are not bundled and set out for waste collection, but not yard waste placed in a properly maintained compost pile; and
- (C) Fire wood that is stored next to a building or left in loose piles on the ground, but not fire wood that is stored away from buildings and at least 18 inches above the ground or in a rodent-proof building.

D.C. Official Code § 8-2103.01(2).

⁵ It is not necessary to decide whether Mr. Clark actually received the notice to abate or what the legal effect of non-receipt of the order would be. Even if Mr. Clark actually received the order, it

Due to his plea of Admit with Explanation, Mr. Clark's liability for violating § 107.1 is not in issue. The record demonstrates, however, that there would not be a factual or legal basis for finding him liable absent his plea. Therefore, I will suspend the fine applicable to a § 107.1 violation. D.C. Official Code § 2-1801.03(b)(6). *See, e.g., DOH v. Mallios*, OAH No. I00-20397 at 5 (Final Order, May 31, 2002); *DOH v. Multi Therapeutic Services, Inc.*, OAH No. I-00-40121 at 10-11 (Final Order, November 29, 2001).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that, based upon his plea of Admit with Explanation, Respondent violated 21 DCMR 708.10 and 22 DCMR 107.1, as alleged in the Notice of Infraction. A fine of \$40 shall be imposed for the § 708.10 violation, but the fine for the § 107.1 violation shall be **SUSPENDED**; and it is further

ORDERED, that Respondent shall pay a total of **FORTY DOLLARS (\$40)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at

does not tell him with sufficient clarity that he needed to do anything with respect to the paint cans and the plastic bag.

the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 06/14/02

John P. Dean
Administrative Judge